

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

RAFAEL O. DE LEÓN DÍAZ

xxx-xx-4082

WANDA I. FERNÁNDEZ ALEJANDRO

xxx-xx-0123

DEBTOR(S)

CASE NO.: 10-04342(ESL)

CHAPTER 13

MOTION REQUESTING DISMISSAL

TO THE HONORABLE COURT:

COMES NOW creditor **FIRSTBANK PUERTO RICO**, represented by the undersigned attorney and very respectfully states and prays:

1. On May 20th, 2010, debtors filed the instant petition for relief.
2. On that same date debtor filed a plan dated May 20th, 2010 by means of which they propose to pay to the Trustee the sum of \$800.00 for sixty (60) consecutive months, and a lump sum payment of \$25,000.00 from the sale of a trucks listed and/or future tax refunds received during the life of the plan, for a total base of \$73,000.00. From said proceeds the Trustee shall disburse \$2,624.00 for attorney's fees and the pre-petition arrears owed to FBPR on its secured claim. The plan further states that they shall keep current the monthly installments to FBPR as they become due.

3. On September 5th, 2008, debtors subscribed a Term Note in the principal amount of \$316,000.00 to the order of FirstBank Puerto Rico, Affidavit #3,638 before Notary Public José J. Ledesma.
4. On February 8th, 2010, debtors subscribed a Loan Agreement, Affidavit #3,869 before Notary Public Maritza Guzmán Matos regarding a line of credit in the principal amount of \$24,600.00.
5. The obligations above described are secured by pledge, as appears from pledge document subscribed by debtors on February 8th, 2010, Affidavit Number 3871 before Notary Public Maritza Guzmán Matos.
6. Appearing creditor is holder in due course the following Mortgage Note:

Mortgage Note payable to the Order of the bearer in the principal amount of \$341,000.00, due upon demand, plus interest at the rate of 15% per annum, plus \$34,100.00 for costs, disbursements and attorneys fees, secured by a Mortgage constituted as appears from Deed Number 10, executed on September 5th, 2008, before Notary José J. Ledesma, recorded at Page 217 of Book 737 of Río Piedras Sur, Property Number 14,065, Registry of San Juan, Fifth Section; and at Page 81 of Book 778 of Trujillo Alto, Property Number 10,485, Registry of Property of San Juan, Fourth Section.

The Mortgage Note above described encumber the real properties described in the Spanish language as follows:

- a) "RUSTICA: Parcela de terreno radicada en el Barrio Cupey Alto del termino municipal de Río Piedras, compuesta de 2.00 cuerdas. En lindes por el NORTE, con la carretera del Barrio Cupey Alto; por el SUR, con una quebrada; por el ESTE, con la parcela B; y por el OESTE, con Arturo Díaz.

FINCA: **14065** (antes 7429) inscrita al folio 171 del tomo 428 de Río Piedras Sur, Registro de la Propiedad de San Juan, Sección IV."

- b) "RUSTICA: Parcela marcada con el #2 del Barrio Carraizo del termino municipal de Trujillo Alto. Con una cabida de 2,495.81 metros cuadrados. En linderos Norte, en una alineación de 34.79 metros con la faja de ensanche de la Carretera P.R 175 dedicada en el caso #5-70-1077-LS; Sur, en una alineación de 35.00 metros con la parcela #3 y en otra alineación de 8.35 metros con el área de viraje del camino dedicado a uso publico; Este, en una sola alineación de 58.00 metros con el camino dedicado a uso publico; Oeste, en una sola alineación de 68.02 metros con la parcela #1.

FINCA: **10,485** inscrita al folio 238 del tomo 206 de Trujillo Alto, Registro de la Propiedad de San Juan, Sección IV."

7. Appearing creditor respectfully requests from this Honorable Court to enter an Order dismissing the instant case based on the following grounds:

- a. As of June 14th, 2010, debtors have an outstanding balance owed to FBPR on the loans described on paragraph number "4" and "5" above, in the following sums of money:

Motion Requesting Dismissal
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LOAN #xxx2292-2:

PRINCIPAL	\$	306,280.09
INTEREST ¹	\$	5,073.47
LATE CHARGES	\$	1,243.17
ATTORNEYS FEES	\$	<u>3,000.00</u>
SUB- TOTAL	\$	315,596.73

ARREARS:

AMOUNT OF ARREARAGE AND OTHER
CHARGES INCLUDED IN SECURED CLAIM

1 PAYMENT OF \$524.62=	\$	524.62
INTERESTS AS OF 05/04/10	\$	2,213.70
LATE CHARGES=	\$	<u>1,423.17</u>
ARREARS SUB-TOTAL		4,165.49

LOAN #xxx2292-3

PRINCIPAL	\$	23,548.70
INTEREST ²	\$	190.02
LATE CHARGES	\$	24.38
ATTORNEYS FEES	\$	<u>800.00</u>
SUB- TOTAL	\$	24,563.10

ARREARS:

AMOUNT OF ARREARAGE AND OTHER
CHARGES INCLUDED IN SECURED CLAIM

INTERESTS AS OF 05/04/10	\$	-----
LATE CHARGES=	\$	-----
ARREARS SUB-TOTAL	\$	00.00

TOTAL AMOUNT OF ARREARAGE: \$ 4,165.49

TOTAL AMOUNT OWED	\$340,159.83
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¹ At the annual rate of 8.40%.

² At the annual rate of 7.57%.

c. Section 1307(c)(1) of the Bankruptcy Code [11 USC §1307(c)(1)] states as follows:

"(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, **for cause**, including--
(1) unreasonable delay by the debtor that is prejudicial to creditors;

d. Debtors have failed to comply with the terms of the contract above described. They have failed to pay to FBPR arrears in the total sum of \$4,165.49, including accrued late payment charges. Under such circumstances, it is respectfully requested from this Honorable Court to enter an Order dismissing the instant case.


8. NOTICE IS HEREBY GIVEN THAT, pursuant to amended Local Bankruptcy Rule 9013-1 (h)(1) and(2), it is respectfully requested from this Honorable Court that, should Debtors or any party in interest fails to file a response to the instant motion, within fourteen (14) days, plus three (3) additional days if a party was served by mail, from the date of service, as evidenced by certification, the instant motion will be

deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

WHEREFORE, it is respectfully requested from this Honorable Court to grant this Motion and to enter an Order dismissing the instant case.

I HEREBY CERTIFY: On this same date I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Attorney for Debtor, José M. Prieto Carballo, Esq; and to Chapter 13 Trustee, José Ramón Carrión Morales, Esq., and by ordinary mail to debtor and to all creditors and parties in interest appearing in the attached Master Address List.

In San Juan, Puerto Rico, this 7th day of July, 2010.



s/ Angel M. Vázquez Bauzá
Angel M Vázquez Bauzá, Esq.
Bar Number: 203308
ENR & Associates
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San Juan, PR 00917-1017
Tel. 754-1313
Fax. 754-1354
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CASE NO.: 10-04342(ESL)

CHAPTER 13

SWORN STATEMENT

I, AIDA MATÍAS, of legal age, married, executive, and resident of San Juan, Puerto Rico, hereby STATES:

1. My personal circumstances are as above stated.
2. I am an Officer of the Special Loans Department of FIRSTBANK PUERTO RICO and, as such, I supervise the custodian of all administrative files concerning legal proceedings in said Division.
3. That on June 30th, 2010, FirstBank requested information from Department of Defense Manpower Data Center and was informed that debtors are not active duty servicemembers, nor reservists nor members of the National Guard in active duty under the Soldiers and Sailors Act, as amended by the Servicemember Civil Relief Act.
4. All the facts above stated are correct according to my personal knowledge and information, and pursuant to the information reflected in debtor's file.

In San Juan, Puerto Rico, on July 8th, 2010.

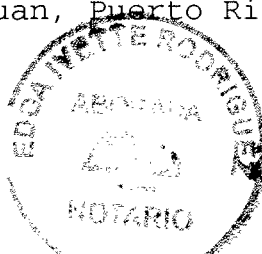

AIDA MATÍAS

AFFIDAVIT NO. 22,038

SWORN and SUBSCRIBED before me by AIDA MATÍAS, of the personal circumstances described above, whom I know personally.

In San Juan, Puerto Rico, on July 8th, 2010.


NOTARY



Department of Defense Manpower Data Center

Jun-30-2010 06:26:09



Military Status Report
Pursuant to the Service Members Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
DE LEON	RAFAEL O	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:D29IVJN3FC

Department of Defense Manpower Data Center

Jun-30-2010 06:26:55



Military Status Report
Pursuant to the Service Members Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
FERNANDEZ	WANDA I	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

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Report ID:UE4D2ILKVT

Label Matrix for local noticing
0104-3
Case 10-04342-ESL13
District of Puerto Rico
Old San Juan
Wed Jul 7 09:44:22 AST 2010

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